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C O N F I D E N T I A L SECTION 01 OF 04 NEW DELHI 004215

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TAGS: PREL PARM TSPL MTCRE KNNP ETTC ENRG TRGY IN

SUBJECT: INDIA PROVIDES NON-PAPER RESPONSE AND DATES FOR
EXPORT CONTROL TALKS

REF: A. STATE 102013
¶B. STATE 18720

Classified By: Political Counselor Ted Osius for Reasons 1.4 (B and D)

¶11. (U) This is an action request for ISN and SCA. Please see para 4.

¶12. (C) Ministry of External Affairs (MEA) Director of the Disarmament and International Security Division (DISA) Amandeep Singh Gill gave poloff September 14 India's non-paper response (below) to the U.S. non-papers provided during the February 2007 High Technology Control Group (HTCG). Gill also offered to host the export control talks proposed in Ref A on October 15-16, with the discussion beginning in the early afternoon of October 15. When poloff pressed for more time, Gill assured him that the day-and-a-half would be sufficient. Gill related that the Indian side planned to address all 64 MTCR Annex Items that do not seem to appear on India's control list (Ref B); describe the enforcement work done by the WMD Advisory Committee chaired by Additional Secretary K.C. Singh; outline the outreach that the Indian government has done and will do; and discuss the continuation of the Export Control and Border Security (EXBS) program.

¶13. (C) Gill also gave poloff a copy of the Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) control list as revised September 7, 2007. He highlighted changes to the definitions and missile-related sections as particularly relevant to the upcoming talks. Although Gill has sent the SCOMET list to the Indian Embassy in Washington, he admitted that the Indian pouch can take an inordinate amount of time. Post will express ship the SCOMET list to the Department.

¶14. (C) Action Request: Please advise of the acceptability of the dates. Post looks forward to hosting the export control discussion.

¶15. (C/REL INDIA) BEGIN NON-PAPER

General Comments On U.S. Non-Papers On Remaining Issues On Nuclear And Missile Export Controls, NSG And MTCR

¶1. Conscious of responsibilities that arise from the possession of advanced a" sensitive and dual-use technologies, and given our abiding commitment to the objective of preventing proliferation of weapons of mass destruction and their means of delivery, we have been

exercising strict control over the export of materials, equipment and technologies of direct or indirect relevance to weapons of mass destruction and their means of delivery. Our system of export controls has been subject to continuous review and updating, where necessary, in consonance with changes in the technology environment and other requirements. This review and updating is underpinned by our willingness to be a full and equal partner in the pursuit of the shared objective of preventing proliferation of weapons of mass destruction and their means of delivery.

¶2. The 18 July 2005 Joint Statement with the US states that "India would reciprocally agree that it would be ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States. These responsibilities and practices consist of ensuring that the necessary steps have been taken to secure nuclear materials and technology through comprehensive export control legislation and through harmonization and adherence to Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines."

¶3. (a) USG non-paper refers to "continued harmonization with the NSG and MTCR as those control lists further evolve" and updating to reflect items added to MTCR and NSG lists and guidelines in 2006 in its comments. We have harmonized our export control list and guidelines with the NSG and MTCR lists and guidelines of 2005. These are being implemented nationally through our law-based export control regulations just as NSG and MTCR members do. Harmonization with changes that take place on a continuing basis in these regimes without our participation in the decision-making process is problematic.

(b) It must be emphasized that the reference to harmonization

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and adherence with the NSG and MTCR is in the context of an equal partnership in which India assumes the same responsibilities and practices and acquires the same benefits and advantages as other leading countries with advanced nuclear technology. We would need to assess how these regimes approach the idea of an equal partnership, especially in the context of an India-specific exemption to the NSG guidelines, before contemplating next steps. As the regimes adjust and take on board our legitimate interests, this process can go forward. It is important that we, being a state with advanced nuclear technology, are equal members in this process.

¶4. On NSG (see detailed comments in attached paper), it is our understanding that there are no substantial differences between DAE guidelines, updated on 1 February 2006, and those of the NSG. Our guidelines are in complete concordance with the non-proliferation objectives of the NSG. Differences in the language used in Gal guidelines flow solely from the fact that India does not subscribe to the NPT related distinction between non-nuclear weapon States and nuclear weapon States. As the U.S. has noted this in fact makes the Indian system stricter than the NSG. .

¶5. On MTCR, harmonization was effected through the revised list issued by the DGFT on 15 July 2005 vide Notification No. 15 (RE-05)/2004-2009 and the Licensing Guidelines issued on the same date vide Public Notice No. 29 (RE- 05)/2004-2009. A revised notification was issued on 7 September 2007 to remove certain ambiguities with regard to the MTCR Annex (as of 2005). With regard to definitions it may be noted that the SCOMET List does not use the payload and range limits specified in the MTCR Annex. This is not to narrow the scope but on the contrary to enable missiles of all types and ranges to be brought under stringent Gal control. In general detailed specifications have been avoided to widen the ambit of items covered and to make it easier for implementing agencies to enforce the export controls. We would welcome an opportunity to clarify SCOMET List items against the MTCR list.

¶6. Constant review and strengthening is inbuilt into the Indian system of export controls inter alia through regular inter-ministerial working groups and now the Advisory Committees set up in November 2006 under the WMD Act of 2005.

Effective enforcement, including through industry outreach, is a key goal in pursuit of which several initiatives have been taken. It should, however, be noted that enforcement in the light of relevant lists and guidelines is a national responsibility even for members of the NSG and MTCR. Steps taken for effective enforcement of export controls have to be in consonance with the structure and procedures of our government. That India's law-based system of export controls is effective and in line with international best practices is demonstrated by our record.

General Comments On U.S. Non-Papers On Remaining Issues On Nuclear And Missile Export Controls, NSG And MTCR

¶1. All items on the NSG Trigger and Dual-use lists contained in INFCIRC/254 are reflected in the SCOMET list categories 0, 3 and 4. As the US non-paper does not comment specifically on any item on the list, it appears that the US agrees that this concordance is complete.

¶2. There are no substantial differences between the guidelines for nuclear transfers (exports) published on 1 February 2006, and those of the NSG. Their fundamental principles, including with relation to safeguards and export controls, are the same as that of the NSG and we have legal measures in place to ensure their effective implementation. Differences in the language used in our guidelines flow solely from the fact that India does not subscribe to the NPT related distinction between non-nuclear weapon States and nuclear weapon States. As US has noted this in fact makes the Indian system stricter than the NSG.

¶3. In addition to the guidelines for nuclear transfers (exports) of 1 February 2006, the guidelines issued by DGFT on 15 July 2005 apply to all nuclear exports.

¶4. With regard to specific US comments or request for clarifications on the guidelines the following may be noted:

a) Use of "appropriate International Atomic Energy Agency (IAEA) safeguards" with regard to licensing of Category 0 items in the DGFT Guidelines of 15 July 2005 makes India's

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guidelines consistent with NSG requirements.

b) "Development" has a broader meaning than "proliferation" and covers both 'horizontal' and 'vertical' proliferation.

c) NSG requirement for "catch all" is in the context of national legislation. This aspect is covered by the Atomic Energy Act, 1962, which covers substance and equipment "used or intended to be used for...", as well as Section 12 of the WMD Act, 2005.

d) Export control measures instituted by the recipient states in the context of 1540 are covered by I c. of the guidelines of 15 July 2005.

e) We apply similar conditions of prior consent for retransfer of Trigger List items. As mentioned in para 4 of the guidelines for nuclear transfers (exports), additional conditions can be imposed by GOI if considered necessary.

f) The distinction between nuclear items and other items is clearly and forcefully brought out in our system. There is a separate licensing authority (DAB) for Category 0 items to avoid any possible conflict of interest due to the dual nature of the mandate of DGFT (trade development as well as regulation). Further the Atomic Energy Act, 1962, which is enforced by DAB, has a fundamental inclination against export of nuclear items. Section 14 (1) (ii) of the Act says: "The Central Government may, subject to such rules as may be made in this behalf and by order prohibit except under a licence granted by it "the acquisition, production, possession, use, disposal, export or import-

- (a) of any prescribed substances.
- (b) of any minerals or other substances specified in the rules, from which in the opinion of the Central Government any of the prescribed substances can be obtained,.
- (c) of any plant designed or adapted or manufactured for the production, development and use of atomic energy or for research in matters connected therewith,.
- (d) of any prescribed equipment. "

Section 14 (2) of the Act further says:

"Nothing in this section shall affect the authority of the Central Government to refuse a licence for the purpose of this section or to include in a licence such conditions as the Central Government thinks fit or to revoke a licence and the Central Government may take any action as aforesaid. "

g) NSG dual use items can be found in Category 0, 3 and 4 (Category 0, which has all the Trigger List items, itself contains some NSG dual use items) of the SCOMET List. While Category 0 items are licensed by DAB and items on Category 3 and 4 are controlled through a licensing process administered by DGFT, DAB consent is an essential requirement for issue of licenses for all dual-use items of nuclear relevance in Category 3 and 4. In examining applications for issue of licenses for export of items listed in Category 3 and 4, apart from the guidelines of July 15, 2005, both Part A of the guidelines for nuclear transfers (Specific Guidelines), which correspond to NSG Trigger List Guidelines as well as Part B of those guidelines (General Guidelines) which apply to all cases, are used. These correspond in substance to Part 2 of the NSG Guidelines (safeguards, risk of diversion, non-proliferation obligations etc.) minus the references to NNWS.

h) The guidelines for nuclear transfers clearly mention "related technology" in both section A and B. Technology is also defined in the Notes preceding the guidelines in the same manner as in the SCOMET List and the DGFT guidelines of July 15, 2005, which places related technology on the same level as the export of the item itself. Thus technology related to Trigger list items as well as dual use items in Category 0, 3 and 4 would be covered by the applicable guidelines on the basis of the same definition. Category 0C of SCOMET List specifically covers technology with regard to substances and equipment specified in both OA and OB given their sensitive nature, whereas Category 4C covers technology with regard to nuclear related dual-use items specified in Category 4A and 4B. Technology related to items in Category 3 is covered in Category 3A503.

i) GOI guidelines meet the requirements of the CPPNM and its 2005 amendment.

j) Updating with the 2006 Guidelines and Lists is a separate

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issue and is addressed in paragraphs 3 a) and b) of 'General comments on US non-papers'.

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